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STATE OF SOUTH CAROLINA	*	COURT OF COMMON PLEAS
	*	
COUNTY OF HAMPTON	*	TRANSCRIPT OF RECORD
-----X		
DANIEL A. SPEIGHTS,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	Case No. 2022-CP-25-00269
	*	
CHUBB LIMITED, et al.,	*	
	*	
Defendant.*	*	
-----X		

September 25, 2023

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

B E F O R E:

The Honorable George M. McFaddin, Jr., Presiding Judge

A P P E A R A N C E S:

Gibson Solomons, III, Esq.  
Attorney for the Plaintiff

Morgan Templeton, Esq.  
Attorney for the Defendant

Recorded by: Webex Courtroom

Transcribed by: Bobbi Fisher, RPR  
SC Official Court Reporter III

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I N D E X

DESCRIPTION	PAGE
Proceedings	3

E X H I B I T S

(None.)

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Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

## P R O C E E D I N G S

1  
2 THE COURT: I wrote on the top of the file  
3 yesterday: Matter under advisement because it's thick,  
4 and they require more than just a few minutes.

5 So this is Defendant's motion for summary judgment?

6 MR. TEMPLETON: Your Honor, this is the Speights  
7 versus Auto Owners case you're calling?

8 THE COURT: Yes, sir.

9 MR. TEMPLETON: Okay. Morgan Templeton on behalf of  
10 the defendant, Auto Owners. It was breaking up, I guess,  
11 when you were introducing the case. So I'm happy to speak  
12 to you if you're ready.

13 THE COURT: I'm ready.

14 MR. TEMPLETON: Okay. Thank you, sir.

15 Morgan Templeton on behalf of Auto Owners Insurance  
16 Company. This is a bad faith breach of contract suit  
17 that's been brought by a man named Daniel Speights. The  
18 first thing I want to lead off with is that it's important  
19 for the Court to understand who the insured is in this  
20 case. The insured of Auto Owners is Speights and Solomons  
21 Law Firm, not Daniel Speights in his individual capacity.

22 The facts of the case are fairly straightforward.  
23 On September 25th, 2019, the bookkeeper for Speights and  
24 Solomons Law Firm received an email that she believed was  
25 coming from Daniel Speights. Within that email, the

1 request is for the bookkeeper, who has full signatory  
2 authority on Mr. Speights' personal accounts, to wire the  
3 sum of \$250,000 to an entity in China. There's an  
4 exchange between the bookkeeper and who she believed to be  
5 Mr. Speights confirming that it was to come from the  
6 personal account; that the funds were to go from Palmetto  
7 State Bank to this entity in China. That occurred on the  
8 same day of the request.

9 As it turns out, this was not Mr. Speights who had  
10 initiated the email but, rather, it was one of these  
11 phishing items that occurs in our country these days.

12 A claim was submitted thereafter to the law firm's  
13 business property insurance company, which was Auto  
14 Owners, and the claim was denied. And the denial was  
15 based on essentially two fundamental premises. One,  
16 Mr. Speights, in his individual capacity, is not the  
17 insured under the Auto Owners policy; rather, the law firm  
18 is. The secondary basis for it is that there are two  
19 exclusions within the policy. One specifically excludes  
20 from the property coverage form -- covered property does  
21 not include bullion, money, or securities. And the  
22 secondary exclusion is that "we will not pay for damage or  
23 loss caused directly or indirectly for any of the  
24 following: False pretense, which is defined as voluntary  
25 parting with any property by you or anyone else to whom

1 you have entrusted the property if induced to do so by any  
2 fraudulent scheme, trick, device, or false pretense."

3 Now, South Carolina courts have not addressed that  
4 exclusion, but several courts across the country have,  
5 most particularly the Midlothian opinion -- it's a  
6 reported decision out of Virginia in the Fourth Circuit --  
7 saying essentially that, yes, we understand that this was  
8 a fraudulent scheme and trick and the employee didn't  
9 intend to do this, but it doesn't change the fact that it  
10 was a voluntary decision on the employee's part to  
11 transfer the funds.

12 Other courts across the country, including New York,  
13 Ohio, and the state of Washington have agreed with that  
14 type of analysis. They were prior to Midlothian opinion,  
15 but the general genesis of the conclusion is the same.  
16 Most of those cases are involving law firms. Most of  
17 those cases are involving situations where the law firm  
18 actually lost money, whether it be client funds or whether  
19 it have been operating funds from the firm.

20 Here, of course, the distinction that we -- the  
21 similar distinction we have here is this has nothing to do  
22 with the law firm itself. It was Mr. Speights' personal  
23 funds that were transferred voluntarily by the bookkeeper  
24 per what she thought to be the request. Even though it  
25 was a scheme or a trick, it doesn't change the fact that

1 it was a voluntary decision on her part.

2 With that, Your Honor, I'll answer any questions the  
3 Court may have.

4 THE COURT: My next question: Is there any  
5 opposition to your motion today?

6 MR. TEMPLETON: I believe that Mr. Gibson Solomons,  
7 who is representing the plaintiff opposes the motion.

8 THE COURT: All right. Mr. Solomons?

9 MR. SOLOMONS: May it please the Court, Your Honor?

10 THE COURT: Yes, sir.

11 MR. SOLOMONS: I'll try and be brief.

12 First of all, let me set the context with which we  
13 come to this, the motion for summary judgment. In this  
14 matter, discovery is still ongoing. And the second aspect  
15 of the context is the issue before the Court is a novel  
16 issue in South Carolina, as evidenced by the fact that the  
17 only law supporting the defendant's motion is out-of-state  
18 law. However, even in that -- and by the way, it is not  
19 only novel legally, it's novel factually, because I  
20 deposed the representative of the defendant, and I asked  
21 them, "This claim -- the clause, when it came in, this was  
22 the first of its type that you're aware of that was  
23 excluded as a result of the false pretense clause?"

24 His answer was, "I believe so, yes."

25 That's on page 23 and 24 of his deposition taken

1 July 28th of this year.

2 So factually novel. Legally novel. Then we get to  
3 the facts. First of all, Your Honor, as to the  
4 distinction being drawn between Mr. Speights and Speights  
5 and Solomons Law Firm, which he founded and is an owner,  
6 in the limited liability company policy language that was  
7 provided to us by Auto Owners, it says, "Who is an  
8 insured?" And they say, "The previous language is deleted  
9 and replaced by the following: A limited liability. You  
10 are insured. Your members are also insured but only with  
11 respect to the conduct of your business."

12 So let me go to that. Your Honor, what happened  
13 here -- I think a jury should be allowed to decide whether  
14 we voluntarily gave \$250,000 to somebody in Hong Kong for  
15 nothing, but what happened here is some bad actor broke  
16 into our email. This is following some events where --  
17 well, it doesn't matter for the basis and why we got  
18 targeted, but we were targeted. They broke into our  
19 email.

20 They then began to control the email of  
21 Mr. Speights. So it wasn't like they took our name and it  
22 almost looked like. It was -- it was Dan Speights' email.  
23 And they were controlling his email. So as the bookkeeper  
24 would send him, "Are you sure?" or "I'm about to send,"  
25 whoever took over would say, "Yes," and then delete that

1 email so Mr. Speights, if he ever looked at his email, he  
2 wouldn't actually see any of this. But they were  
3 controlling the exchange in between Mr. Speights and his  
4 bookkeeper.

5           So then we do -- we do what -- our bookkeeper does  
6 what she believes is a directive of our senior partner,  
7 and -- but she did it based upon an invoice that was sent  
8 not to Mr. Speights but to the law firm. So the invoice  
9 itself -- and that is documents that have been produced to  
10 the defendant -- the invoice itself is an invoice to the  
11 law firm, not to Mr. Speights.

12           Mr. Speights, because of his role in the law firm,  
13 he provides personal funds to cover the cost of the law  
14 firm, and so he does that or she -- the bookkeeper thinks  
15 he's doing that because that was the normal course of  
16 conduct.

17           So let me get to the policy itself. Those are the  
18 facts underlying the policy. The policy itself. When we  
19 went and bought our policy, our normal way of saying  
20 things is, "Hey, if we can get coverage, we want  
21 coverage."

22           So, in this particular policy -- and I don't know  
23 about the Midlothian policy that is the -- the Virginia  
24 policy that's the basis for the defendant's motion for  
25 summary judgment, but our policy provides additional

1 coverage for multiple things, including money in  
2 securities and including forgery and alteration. When I  
3 deposed the defendant's representative, I asked them  
4 specifically about that additional coverage. And in those  
5 questions, I asked -- these are questions asked during the  
6 defendant's representative's depo:

7 "There is an identity recovery coverage that we  
8 purchased, annual -- if someone is impersonating  
9 Mr. Speights and having \$250,000 sent in a wire, is that  
10 potentially covered under identity recovery?"

11 ANSWER: "I'm not sure."

12 That's pages 26 and 27 of the July 28, 2023, depo.

13 Later on, I say, "There's optional coverage here  
14 against -- does, in fact, grant you in circumstances some  
15 coverage for" -- oh, I'm sorry. This is an answer.

16 I said, "Is there optional coverage for money  
17 securities?"

18 The answer, "You have an optional coverage here.  
19 You know, again, it does, in fact, grant you, in certain  
20 circumstances, coverage for money and securities."

21 That's a concession on an additional coverage.

22 I asked, "Is there coverage -- is there an amount  
23 for forgery and alterations that also seems to be  
24 included? Is that correct?"

25 "Yes, there is coverage here for forgery and

1 alterations."

2           And then I asked later in the same page -- I'm now  
3 on page 29, "Could what described to Mr. Speights be --  
4 could what happened to Mr. Speights be described as  
5 forged?"

6           "I believe that" -- and then I cut him off; I didn't  
7 let him answer.

8           I said, "Mr. Speights' electronic signature on that  
9 email, was that a forgery of his electronic signature?"

10           His answer, "Essentially, it could be."

11           So, first of all, on the first instance, as far as  
12 the distinction being drawn between Mr. Speights and the  
13 law firm, their own policy language makes that a nullity.

14           I also think, if it didn't, Your Honor, because of  
15 the nature of a limited liability company and  
16 Mr. Speights' role as in this particular limited liability  
17 company, that would not be probative of the claim being  
18 brought by Mr. Speights against Auto Owners.

19           As far as the summary judgment being based or being  
20 brought pursuant to the false pretense clause which, when  
21 I deposed the individual on behalf -- that was appearing  
22 on behalf of the defendant, Auto Owners, I asked them is  
23 the basis for this denial false pretense clause, and they  
24 said yes, that's it. That's why we're denying this claim.

25           So as far as that being the basis for the denial, I

1 believe there are ample ambiguities or contradicting  
2 clauses inside the claim that make summary judgment not  
3 appropriate. And if Your Honor were so inclined to even  
4 think, "No, Mr. Templeton's argument is still  
5 forthcoming," then I would just urge the Court to wait  
6 until the full termination of all discovery before we  
7 would decide that, because discovery is still ongoing.

8 So I don't think I have anything else. I don't  
9 think -- well, I think that's it, Judge.

10 MR. TEMPLETON: Your Honor, briefly in reply?

11 THE COURT: Yes, sir.

12 MR. TEMPLETON: Two things. One, the language that  
13 was quoted to you about the LLC and the operating --  
14 operations of this policy, the key distinction is that it  
15 relates to the business. Relates to the business -- he  
16 would be an insured if it was related to the business.  
17 There's nothing before the Court that shows an affidavit  
18 or admissible testimony showing that this thing had  
19 anything to do other than the loss of his personal funds.

20 Number two, with respect to the novel issue  
21 argument, South Carolina has plenty of case law talking  
22 about rules of construction and what the Court is to do in  
23 applying the plain and ordinary terms of the policy and  
24 draw its own distinction and own conclusion to whether or  
25 not the exclusion in the language applies.

1           There's a host of cases that are cited in my brief  
2 from South Carolina about that. This Court can use its  
3 own judgment in applying those plain and ordinary terms  
4 and decide whether or not the false pretense exclusion  
5 applies.

6           These other cases that are cited in the brief from  
7 around the country are completely analogous to this. Are  
8 they controlling on this Court? No, they are not. But  
9 the rules of construction are. And what I would  
10 respectfully submit is that the language of the policy is  
11 plain, clear, and unambiguous; shows that a false pretense  
12 occurred here. It's an unfortunate set of circumstances,  
13 but it's not covered under this policy, and no amount of  
14 discovery is going to change that argument in terms of  
15 this -- this language applying.

16           Respectfully, we believe the motion for summary  
17 judgment is appropriate and should be granted.

18           THE COURT: Gentlemen, as I said at the outset, I  
19 had a strong feeling I would take this one under  
20 consideration, and I do ask for your patience. You have  
21 been good so far, and I thank you for that, and you will  
22 hear from me as soon as I can get to it.

23           MR. TEMPLETON: Thank you, Your Honor.

24           MR. SOLOMONS: Thank you, Your Honor.

25           THE COURT: Thank y'all.

(The above matter concluded.)

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CERTIFICATE OF TRANSCRIBER

CASE NAME/NUMBER: Speights v. Chubb Limited

2022-CP-25-00269

DATE OF HEARING: 9/25/23

COURT REPORTER/MONITOR: Webex Courtroom

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I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

*Bobbi Fisher*

/s/ Bobbi Fisher\_\_\_\_\_

Bobbi Fisher, RPR and Certified Transcriber

Date Submitted: 12/5/23

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